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PRODUCTIONS CO., LTD.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO.,
LTD., a Japanese corporation,

Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

**TSUBURAYA PRODUCTIONS CO.,
LTD.'S NOTICE OF
APPLICATION AND
APPLICATION FOR DEFAULT
JUDGMENT BY THE COURT
AGAINST COUNTERDEFENDANT
SOMPOTE SAENGDUENCHAI**

Date: December 5, 2016
Time: 10:00 a.m.

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TSUBURAYA PRODUCTIONS CO.,
LTD., a Japanese corporation,

Counterclaimant,

vs.

UM CORPORATION, a Japanese
corporation; ULTRAMAN USA, INC.,
a California corporation; SOMPOTE
SAENGDUENCHAI, a Thai individual;
GOLDEN MEDIA GROUP, INC., a
California corporation; TIGA
ENTERTAINMENT COMPANY,
LTD., a Hong Kong corporation; and
DOES 1-10,

Counterdefendants.

Location: Courtroom 4

Judge: Hon. André Birotte, Jr.

Trial Date: August 22, 2017

NOTICE OF APPLICATION

PLEASE TAKE NOTICE that, on December 5, 2016, at 10:00 a.m., in Courtroom 4 of the United States District Court for the Central District of California, located at 312 North Spring Street in Los Angeles, California, Defendant-Counterclaimant Tsuburaya Productions Co., Ltd. (“Tsuburaya”) will present its application for a default judgment against Counter-defendant Sompote Saengduenchai (“Sompote”) pursuant to Federal Rule of Civil Procedure 55(b)(2) and Central District of California Local Rule 55-1.

Good cause exists to enter default judgment against Sompote. First, each of the procedural requirements for entry of default judgment against Sompote are met. *See* Local Rule 55-1. Sompote was personally served with Tsuburaya’s summons and counterclaims on June 27, 2016 (*see* Dkt. No. 68; Dkt. No. 111), and the time for Sompote to respond to Tsuburaya’s counterclaims expired on July 18, 2016. Accordingly, the Court entered default against Sompote on September 22, 2016. (Dkt. No. 69.) There is no evidence suggesting that Sompote is a minor, incompetent, in the military service, or otherwise exempt from responding to Tsuburaya’s counterclaims under the Servicemembers Civil Relief Act.

Second, each of the relevant substantive considerations supports the entry of default judgment: (i) Tsuburaya will suffer prejudice in the absence of a default judgment because Sompote has failed to appear in the case; (ii) Tsuburaya has adequately stated claims against Sompote for copyright infringement and declaratory relief; (iii) Tsuburaya is not seeking a monetary judgment against Sompote, thus obviating any concerns about proof of monetary damages; (iv) all the facts pleaded against Sompote are deemed admitted as a result of his default; (v) his default was due to his intentional evasion and avoidance, not to excusable neglect; and (vi) Sompote’s failure to appear makes a decision on the merits of Tsuburaya’s claims against Sompote impracticable.

1 Tsuburaya's application for entry of default judgment against Sompote is
2 supported by the concurrently filed memorandum of points and authorities and
3 Declaration of Daniel C. Posner.

4
5 DATED: November 7, 2016 QUINN EMANUEL URQUHART &
6 SULLIVAN, LLP

7
8 By /s/ Daniel C. Posner
9 Daniel C. Posner
10 Attorneys for TSUBURAYA
11 PRODUCTIONS CO. LTD.
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MEMORANDUM OF POINTS AND AUTHORITIES

Defendant-Counterclaimant Tsuburaya Productions Co. (“Tsuburaya”) hereby respectfully requests that the Court enter default judgment against Counter-defendant Sompote Saengduenchai (“Sompote”) pursuant to Federal Rule of Civil Procedure 55(b)(2) and Local Rule 55-1, and the Court’s entry of default on September 22, 2016 (Dkt. No. 111).

Preliminary Statement

Sompote is likely the most central figure in this case. He is the alleged recipient of, and the only living alleged witness to the creation of, the “1976 Agreement” pursuant to which Sompote and all other counter-defendants purport to hold rights in the famous Ultraman works that Tsuburaya created decades ago. Tsuburaya, as the rightful owner of the copyrights in the Ultraman works, tried diligently for months to serve Sompote with its counterclaims for copyright infringement and declaratory relief—which are premised on the allegation that the 1976 Agreement was forged and falsified by Sompote—so that those claims could be adjudicated against Sompote on their merits. But Sompote evaded service for months and then, after being personally served, declined to appear in the case to defend the validity of the 1976 Agreement and his alleged rights in Ultraman.

On September 22, 2016, the Court entered default against Sompote. On October 28, 2016, the Court ordered Tsuburaya to show cause why the case should not be dismissed against Sompote, and stated that Tsuburaya could satisfy the OSC by moving for entry of default judgment against Sompote. In satisfaction of the OSC, Tsuburaya brings this application for default judgment against Sompote. As shown below, the application is amply supported both procedurally and substantively. Sompote’s decades of fraudulent conduct and infringements relating to Ultraman should be finally adjudicated against him through the entry of default judgment on Tsuburaya’s claims for copyright infringement and declaratory relief.

Background

A. Factual Background

This lawsuit concerns infringement of creative and literary works involving the Ultraman superhero character, created by Japanese entertainment company Tsuburaya, in the early 1960s. (Dkt. No. 19 ¶¶ 2, 16.)¹ By 1973, the library of Ultraman works included the movies *Ultra Q*, *Ultraman*, *Ultra Seven*, *The Return of Ultraman*, *Ultraman Ace*, *Ultramen Taro*, and *Jumborg Ace*, and since then, Tsuburaya has developed or authorized dozens of other audio-visual and literary works based on the Ultraman character. (Dkt. No. 19 ¶¶ 16-29.)

In 1973 and 1974, Tsuburaya collaborated with Sompote, a Thai individual, and his company, Chaiyo Productions, to co-create two non-Ultraman movies, *Jumborg Ace* and *The Ultra 6 Brothers vs. the Monster Army*. (Dkt. No. 19 ¶¶ 30-31.) At some point after the collaboration, Sompote falsified a document titled “License Granting Agreement,” bearing the date of March 4, 1976, that purported to grant Sompote rights in nine Ultraman movies as the exclusive licensee of Tsuburaya in all territories except Japan (the “1976 Agreement”). (Dkt. No. 19 ¶ 32.) The 1976 Agreement purported to bear the signature of Noboru Tsuburaya, who was the president of Tsuburaya as of 1976, and who oversaw the growth of the Ultraman brand into a global force. (Declaration of Shinichi Ooka (“Ooka Decl.”) Dkt. No. 87 ¶¶ 6-7.)

For more than two decades after he received his alleged rights under the 1976 Agreement, Sompote did not show that document to anyone and did not attempt to exercise any of the rights that had allegedly been granted to him under it. (See Declaration of Manu Rakwattanakul (Dkt. No. 86) ¶ 7, Ex. A at 37.) On the other

¹ Because Sompote has defaulted, the factual allegations against him in Tsuburaya’s counterclaims are deemed admitted, and must be accepted as true. See *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

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1 hand, during that time Tsuburaya continued to develop and exploit the Ultraman
2 brand around the world, including in the U.S. (Dkt. No. 19 ¶ 28; Ooka Decl. ¶ 4.)

3 In May 1996, one year after Noboru Tsuburaya died, Sompote presented the
4 1976 Agreement to Kazuo Tsuburaya—the company’s then-president—and
5 demanded that his alleged rights be honored. (Ooka Decl. ¶ 7.) Nobody from
6 Tsuburaya (or apparently from anywhere else) had ever seen or heard about the
7 alleged 1976 Agreement. (*Id.*) After some initial uncertainty about whether the
8 contract could possibly be valid, Tsuburaya determined that it was, in fact, a
9 wholesale forgery and fabrication, and Tsuburaya has maintained that position ever
10 since. (*Id.*)

11 Since 1996, Sompote has used the 1976 Agreement to justify a global
12 campaign of copyright and other infringements of Tsuburaya’s rights in Ultraman.
13 (Dkt. No. 19 ¶ 33.) In addition to his own exploitations of Ultraman, Sompote has
14 transferred his alleged rights under the document to his affiliated companies and
15 family members, including Chaiyo, his son Perasit, and then Perasit’s company,
16 Plaintiff-Counter-defendant UM Corporation (“UMC”). (Dkt. 1 ¶ 11.) In turn,
17 UMC has relied upon the rights it claims to hold under the 1976 Agreement to
18 distribute Ultraman works in markets around the world, including in the U.S.,
19 through its licensees, including counter-defendants TIGA and Golden Media Group.
20 (*Id.* ¶¶ 17-18.) Sompote too continues to rely on the 1976 Agreement to exploit
21 Ultraman, including in recent years through his licensee, counter-defendant
22 Ultraman USA. (*See* Dkt. No. 19 ¶ 42.)

23 **B. Procedural Background**

24 Relying on a fraudulent chain-of-title traceable to the 1976 Agreement, UMC
25 filed this lawsuit against Tsuburaya on May 19, 2015, asserting claims for copyright
26 infringement, breach of contract, intentional interference with contractual relations,
27 and declaratory relief. (Dkt. No. 1 ¶¶ 33-56.) Tsuburaya answered UMC’s
28

1 complaint and asserted counterclaims for copyright infringement and declaratory
2 relief against Sompote, UMC, Ultraman USA, Golden Media Group and TIGA.
3 (Dkt. No. 19 ¶¶ 6-11.)

4 After months of diligent efforts to serve Sompote with the summons and
5 counterclaims, Tsuburaya's process servers were finally able to effect service of
6 process on June 27, 2016, in Thailand, and Tsuburaya filed proof of service with the
7 Court. (Dkt. No. 111 at 3-4; Dkt. No. 68.) Sompote did not respond to Tsuburaya's
8 counterclaims by the deadline of July 18, 2016. On September 22, 2016, the Court
9 entered default against Sompote. (Dkt. No. 111.) On October 28, 2016, the Court
10 ordered Tsuburaya to show cause why the action should not be dismissed against
11 Sompote, and stated that Tsuburaya "can satisfy this order by seeking default
12 judgment." (Dkt. No. 113.)²

13 Argument

14 **I. THE PROCEDURAL REQUIREMENTS FOR ENTRY OF DEFAULT 15 JUDGMENT ARE SATISFIED**

16 Entry of default judgment against Sompote is warranted, first, because the
17 procedural requirements of Local Rule 55-1 are met, as set forth in the
18 accompanying Declaration of Daniel C. Posner. *See* Cal. C.D. L.R. 55-1(a), (b).

19 Specifically, default was entered against Sompote by the Court on September
20 22, 2016 (Dkt. No. 111), due to Sompote's failure to respond to Tsuburaya's
21 counterclaims against Sompote for copyright infringement and declaratory relief
22 (Dkt. No. 19). Sompote is neither an infant nor an incompetent person, and the
23 Servicemembers Civil Relief Act does not apply because Sompote is not an active
24 military servicemember in the United States. Moreover, because Sompote has not

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26 ² Although the October 28 OSC was directed to "Plaintiff(s)," Tsuburaya
27 construes the OSC as being directed to it because it, and not Plaintiff UMC, asserted
28 claims against Sompote.

“appeared personally or by a representative,” he is not entitled to notice of this application for entry of default judgment. Fed. R. Civ. P. 55(b)(2); Cal. C.D. L.R. 55-1(e). Default judgment against Sompote is thus procedurally proper.

II. THE *EITEL* FACTORS FAVOR ENTRY OF DEFAULT JUDGMENT AGAINST SOMPOTE

Entry of default judgment is also warranted under the substantive factors courts evaluate when considering an application for default judgment under Federal Rule of Civil Procedure 55(b)(2). When exercising discretion to enter a default judgment, courts in the Ninth Circuit consider the following:

(1) The possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986); *see, e.g., Starbucks Corp. v. Glass*, 2016 WL 6126255, at *2 (C.D Cal. Oct. 20, 2016). “In applying this discretionary standard, default judgments are more often granted than denied.” *PepsiCo v. Triunfo-Mex, Inc.*, 189 F.R.D. 431, 432 (C.D. Cal. 1999). These factors favor entry of default judgment against Sompote here.

A. Tsuburaya Will Suffer Prejudice In the Absence of a Default Judgment Against Sompote

Where default judgment is the only recourse against a defaulting party, the first *Eitel* factor is satisfied. *See, e.g., PepsiCo, Inc. v. Cal. Security Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002); *accord Starbucks*, 2016 WL 6126255, at *2; *Vogel*, 992 F. Supp. 2d at 1007.

Here, the first *Eitel* factor favors entry of default judgment against Sompote because Sompote “failed to appear or offer a defense in this case” and, consequently, “the only way [Tsuburaya] can obtain relief” against Sompote “is

1 through a default judgment.” *Starbucks Corp.*, 2016 WL 6126255, at *2; *Vogel v.*
2 *Rite Aid Corp.*, 992 F. Supp. 2d 998, 1007 (C.D. Cal. 2014) .

3 **B. Tsuburaya Has Adequately Stated Claims Against Sompote,**
4 **Satisfying the Second and Third Eitel Factors**

5 The second and third *Eitel* factors are likewise satisfied here. These factors
6 are typically considered together, and “require that a plaintiff state a claim on which
7 the [plaintiff] may recover.” *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219
8 F.R.D. 494, 499 (C.D. Cal. 2003). Tsuburaya has asserted two counterclaims
9 against Sompote, a claim for copyright infringement and a claim for declaratory
10 relief. Because both are adequately pleaded, the second and third *Eitel* factors
11 likewise favor entry of default judgment. *See id.* at 500.³

12 **1. Tsuburaya Has Stated A Claim for Copyright Infringement**
13 **Against Sompote**

14 Tsuburaya’s counterclaim for copyright infringement against Sompote
15 establishes both elements of a copyright infringement claim: (1) ownership of a
16 valid copyright; and (2) copying of original elements of the work. *Feist*
17 *Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 361 (1991).

18 Tsuburaya’s counterclaim adequately pleads ownership of a copyright,
19 including through Tsuburaya’s allegations that, “[a]t all relevant times, Tsuburaya
20 has owned all applicable right, title and interest in and to” the “Ultraman Library,”
21 which “consists of original works of authorship that constitute the copyrighted
22 intellectual property of Tsuburaya.” (Dkt. No. 19 ¶¶ 4, 47.) Tsuburaya alleged
23 further that in 1966, it “created multiple films and other original works of
24 authorship based on the Ultraman superhero character” (Dkt. No. 19 ¶ 2), and it
25 described the history of Tsuburaya’s creation and development of the Ultraman

26 ³ Notably, none of the other counter-defendants who have appeared in the case
27 moved to dismiss Tsuburaya’s counterclaims, or have otherwise challenged them,
28 on the grounds that they were not adequately pleaded.

1 Library in detail (Dkt. No. 19 ¶¶ 17-29). In addition, Tsuburaya alleged that it
2 “obtained copyright registration in and/or filed applications with the United States
3 Copyright Office to register the copyrights in a number of works contained in the
4 Ultraman Library.” (Dkt. No. 19 ¶ 29.) The counterclaim thus establishes
5 Tsuburaya’s ownership of the relevant Ultraman copyrights.

6 Tsuburaya’s counterclaim also establishes Sompote’s infringement, including
7 through its allegations that Sompote has “cop[ied], distribut[ed], publicly
8 display[ed] and publicly perform[ed] the Ultraman Library without Tsuburaya’s
9 authorization.” (Dkt. No. 19 ¶¶ 47, 48). Tsuburaya also alleged that Sompote
10 falsified the 1976 Document purporting to transfer “certain copyright and/or
11 trademark rights in certain works contained in the Ultraman Library” to Sompote
12 (*id.* ¶ 32), that “Tsuburaya has not authorized [Sompote] to utilize its copyrighted
13 material” (*id.* ¶ 4), and that Sompote thus has “no right to display, perform, license
14 or otherwise exploit the Ultraman Library” (*id.*).

15 Tsuburaya further alleged that based on the falsified 1976 Agreement,
16 Sompote has engaged in “a global campaign of unlawful profiteering and wholesale
17 copyright infringement of the Ultraman Library,” including on “American shores.”
18 (*Id.* ¶¶ 32, 33, 35.) Among other things, Sompote has transferred his alleged rights
19 in the falsified 1976 Agreement to his son, Perasit, who, in turn, relied on those
20 same bogus rights to grant further licenses and engage in unauthorized acts of
21 distribution of Ultraman works, including in the U.S. (*Id.* ¶¶ 35-36.) Sompote also
22 announced that, through counter-defendant Ultraman USA, he would release “a
23 substantial part of the Ultraman Library” on Blu-Ray disc in the United States.
24 (Dkt. No. 19 ¶ 42.) Tsuburaya’s allegations demonstrate that Sompote has infringed
25 Tsuburaya’s copyrights in the Ultraman Library.

26 Because Tsuburaya’s counterclaim adequately pleads both ownership of
27 copyrights in the Ultraman Library and infringement of those copyrights by
28

1 Sompote, Tsuburaya has stated a meritorious claim for copyright infringement. *See*,
2 *e.g.*, *Starbucks*, 2016 WL 6126255, at *4 (holding that default judgment was
3 appropriate where plaintiff “sufficiently pled a meritorious copyright infringement
4 claim”); *Rosen v. Medlin*, 2016 WL 1715179, at *2 (C.D. Cal. April 27, 2016)
5 (same); *TVB Holdings (USA), Inc. v. eNom, Inc.*, 2014 WL 3717889, at *3 (C.D.
6 Cal. July 23, 2014) (same).

7 **2. Tsuburaya Has Stated a Claim For Declaratory Relief**
8 **Against Sompote**

9 Tsuburaya has also pleaded a meritorious claim for declaratory relief. “A
10 complaint for declaratory relief is legally sufficient if (1) it sets forth facts showing
11 an actual controversy relating to the legal rights and duties of the parties under a
12 contract and (2) requests that these rights and duties be adjudged by the court.”
13 *Walsh v. Washington Mutual Bank*, 2010 WL 8971768, at *3 (C.D. Cal. March 5,
14 2010) (citing *Columbia Pictures Corp. v. De Toth*, 161 P.2d 217 (Cal. App. 1945)).

15 Here, Tsuburaya’s counterclaim shows an actual controversy concerning the
16 legitimacy of the 1976 Agreement, and requests that the Court adjudge that the 1976
17 Agreement is of no force or effect, and that Tsuburaya is the exclusive owner of the
18 Ultraman Library. (Dkt. No. 19 ¶¶ 52-54). These allegations are thus sufficient to
19 state a claim for declaratory relief against Sompote.

20 Because Tsuburaya’s counterclaim “properly alleges the necessary elements
21 for each of its causes of action,” the second and third *Eitel* factors favor entry of
22 default judgment against Sompote. *Philip Morris*, 219 F.R.D. at 500.

23 **C. The Amount of Money At Stake Favors Entry of Default Judgment**

24 The fourth *Eitel* factor considers “the amount of money at stake in relation to
25 the seriousness of the [d]efendant’s conduct,” and “[d]efault judgment is disfavored
26 where the sum of money at stake is too large or unreasonable in relation to
27 defendant’s conduct.” *Vogel*, 992 F. Supp. 2d at 1012. While Tsuburaya has
28 suffered damage from Sompote’s infringement, and reserves the right to seek

1 monetary damages from the other counter-defendants, Tsubuaraya is not seeking
2 monetary relief as part of its default judgment against Sompote. Because Tsuburaya
3 is “not seeking monetary damages” against Sompote, “this factor favors granting
4 default judgment.” *PepsiCo, Inc. v. Cal. Security Cans*, 238 F. Supp. 2d 1172,
5 1176-77 (C.D. Cal. 2002).

6 **D. There is No Dispute As to the Material Facts Alleged Against**
7 **Sompote Because Sompote is Deemed to Have Admitted Them**

8 The fifth *Eitel* factor is also satisfied because all of the facts pleaded against
9 Sompote, including that he falsified the 1976 Agreement, have been deemed
10 admitted in light of Sompote’s default, and there is thus no dispute as to any of the
11 material facts Tsuburaya has alleged against Sompote. *See Vogel*, 992 F. Supp. 2d
12 at 1012-13 (“Since [the moving party’s] factual allegations are presumed true ... no
13 factual disputes exist that would preclude the entry of default judgment.”); *Philip*
14 *Morris*, 219 F.R.D. at 500 (where default is entered, “no dispute has been raised
15 regarding the material averments of the complaint, and the likelihood that any
16 genuine issue may exist is, at best, remote”); *PepsiCo*, 238 F. Supp. 2d at 1177
17 (“Upon entry of default, all well-pleaded facts in the complaint are taken as true ...
18 [a]ccordingly, no genuine dispute of material facts would preclude [default
19 judgment].”).

20 **E. Sompote’s Default Was Not Due to Excusable Neglect**

21 The sixth *Eitel* factor also favors entry of default judgment because
22 Sompote’s default was not due to excusable neglect, but was instead due to
23 Sompote’s deliberate avoidance of this lawsuit. Indeed, in light of Sompote’s
24 attempts to evade service, “[t]he possibility of excusable neglect in this case is
25 remote.” *Vogel*, 992 F. Supp. 2d at 1013; *PepsiCo*, 238 F. Supp. 2d at 1177.

26 As detailed in the Court’s order entering default, Sompote was “presented
27 with the summons and counterclaims in this case several times” (Dkt. No. 111 at 3),
28 but refused to accept them (*see, e.g.*, Dkt. No. 68-1 ¶ 12). Copies of both the

1 summons and counterclaims were not only mailed to an address believed to be used
2 by Sompote (Dkt. No. 54 at 5, 6), but also to Sompote's attorney in Thailand, who
3 claimed she lacked authorization to accept them (Dkt. No. 68-1 ¶¶ 12-14; Dkt. No.
4 111 at 3). Finally, on June 27, 2016, after Sompote again refused to accept the
5 documents from a process server in Thailand, the process server placed the
6 summons and counterclaims on the windshield of Sompote's car, thus effecting
7 personal service. (Dkt. No. 111 at 3-4; *see also* Dkt. No. 68 at 3-4; Dkt. No. 68-1 ¶¶
8 6, 14-15; Dkt. No. 68-2 ¶¶ 5, 14.)

9 It is well-established that "[t]here is little possibility of excusable neglect
10 when the defendant fails to respond after being properly served." *Starbucks Corp.*,
11 2016 WL 6126255, at *6. Accordingly, the sixth *Eitel* factor weighs in favor of
12 default judgment against Sompote here.

13 **F. The Policy Favoring Decisions on the Merits Does Not Preclude**
14 **Default Judgment Against Sompote**

15 The seventh *Eitel* factor recognizes the federal policy favoring disposition of
16 cases on their merits "whenever reasonably possible." *See Eitel*, 782 F.2d at 1472.
17 Nonetheless, "this preference, standing alone, is not dispositive," and thus "the
18 preference to decide cases on the merits does not preclude a court from granting
19 default judgment." *PepsiCo*, 238 F. Supp. 2d at 1177 (internal quotation marks
20 omitted); *Starbucks*, 2016 WL 6126255, at *6 (same); *Vogel*, 992 F. Supp. 2d at
21 1013 (same). Indeed, a party's failure to answer a pleading "makes a decision on
22 the merits impractical, if not impossible." *PepsiCo*, 238 F. Supp. 2d at 1177; *see*,
23 *e.g.*, *Starbucks*, 2016 WL 6126255, at *6 (same); *Vogel*, 992 F. Supp. 2d at 1013
24 (same). Because Sompote has failed to appear here, a decision on the merits of
25 Tsuburaya's claims against Sompote is impossible, and thus the seventh *Eitel* factor
26 also favors entry of default judgment. *Id.*

Conclusion

For the reasons set forth above, default judgment should be entered against Sompote.

DATED: November 7, 2016

QUINN EMANUEL URQUHART &
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By /s/ Daniel C. Posner

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